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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,638	03/18/2004	Volker Buhren	TRAUMA 3.0-454	5367
530 7590 12/11/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER SHAFFER, RICHARD R	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/803,638

Applicant(s)

BUHREN ET AL.

Examiner

Richard R. Shaffer

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 22-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 5<sup>th</sup>, 2007 has been entered.

### ***Claim Rejections - 35 USC § 112***

The amendments to the claims filed on November 5<sup>th</sup>, 2007 are acknowledged and accepted by the examiner. The previous 35 U.S.C. 112, first paragraph rejections are hereby withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 and 22-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haag et al (US Patent 5,976,141) in view of Richelsoph (US Patent 6,017,345) and Klaue (US Patent 4,493,317).

Haag et al disclose a device (**Figures 1-8**) comprising: an elongated load-bearing element/plate (**100**) having an opening (**101**); the opening (**101**) having an

upwardly facing surface (**102** or **104** depending upon orientation) that tapers inward towards the bone contacting surface (**105** or **103** depending upon orientation); multiple (**Column 3, Lines 22-25**) elongated (as can be seen in **Figure 1** and described in **Column 3, Lines 1-2**) inserts (**301**) with a portion (see **Figures 3-6**) generally complementary to the recessed upwardly facing surface (**102**); the insert exhibiting a threaded central through-bore (**310**) with a non-normal inclined axis (**313**) relative to the principal plane of the load-bearing element/plate (**100**); the inserts (**301**) have parallel flat surfaces at sections (**elements 22, below 35, Figures 1-2**); a fixation element (**200**); the insert exhibits locking mechanisms to lock with the internal surface of the load-bearing element/plate (**100**); the locking mechanism/insert having a resilient extension (**20**) with projections (**22**).

Haag et al fail to explicitly disclose two parallel sidewalls in the opening (**101**) which are parallel to the longitudinal axis of the plate and perpendicular to the outwardly facing and bone contacting surfaces, a bottom surface generally parallel to the bone-contacting surface to receive projections from the insert and the extensions of the insert parallel to the longitudinal axis of the plate and extending perpendicular to the bone contacting surface.

Haag et al state (**Column 3, Lines 19-21**) that their insert can be used in the bone plate described in Klaue (US Patent 4,493,317). Klaue teaches (**Figure 8**) elongated holes with flat sidewalls parallel to the longitudinal axis and perpendicular to the bone contacting surface. Since Haag et al, already state that their device advantageously would function with Klaue, it would have been obvious to one having

ordinary skill in the art at the time of invention to utilize the insert of Haag et al in a bone plate with the design of Klaue.

Richelsoph teaches (**Figures 1-15**) an insert (**28**) with resilient extensions (**34**) to be positioned within a recess (**13**) that protrudes perpendicularly from the bone contacting base and allows the resilient extensions to hook/snap-in for retention. It would have been obvious to one having ordinary skill in the art at the time of invention to substitute the perpendicular cut-out design of Richelsoph for the chamfered design of Haag et al to provide for an equivalent means of a snap-fit feature for a bone plate insert with predictable results.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. Specifically, with the showing of Klaue demonstrating parallel side walls for the bone plate opening and the revised obviousness analysis in view of Richelsoph, the limitations applicant stated omitted from the previous combination are now addressed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer  
December 4th, 2007



EDWARD C. ROBERT  
SUPERVISORY PATENT EXAMINER